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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 357

JOSEPH W. DICK ET AL., PETITIONERS

v.

ROBERT S. MCNAMARA, SECRETARY OF DEFENSE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the United States District Court for the District of Columbia (R. 174)[1] is not reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit reversing the judgment of the district court (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on May 16, 1963. The petition for a writ of certiorari was filed on August 9, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] All record references are to the Joint Appendix submitted in the court of appeals and filed here pursuant to Rule 21 of this Court.

QUESTION PRESENTED

Whether a reorganization of personnel duties in naval shipyards constituted a "transfer of function" within the meaning of the Veterans' Preference Act, 5 U.S.C. 861, so as confer on the affected employees transfer rights which must be recognized before the application of reduction-in-force procedures.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Veterans' Preference Act, 58 Stat. 390, as amended, 5 U.S.C. 861, of the regulations of the Civil Service Commission, 5 C.F.R. Part 20, and of Department of the Navy Civilian Personnel Instructions 170, are set forth in the Appendix, *infra*, pp. 16–26.

STATEMENT

Petitioners, civilian employees of the Department of the Navy, brought this action for judicial review of an adjudication of their employment status by the Civil Service Commission following a reorganization of work assignments with respect to one of the functions performed in the several naval shipyards. The relevant facts, which are not in dispute, may be summarized as follows:

1. THE REDUCTION IN FORCE

The Department of the Navy established, in 1950, a Production, Planning and Control system for the programming of work performed within the various naval shipyards (R. 13). Employees in the shipyards who held the existing rating of Planner and Estimator were assigned the responsibility for drawing up

preliminary plans for vessel repair and maintenance work (R. 10). A new rating, denominated Shop Analyst and Scheduler, was created, and the employees who acquired this rating were assigned the task of refining in greater detail the preliminary plans prepared by the Planners and Estimators (R. 10).[2] The Planners and Estimators were in a different competitive level from, and received a higher rate of pay than, the Analysts and Schedulers (R. 163). Petitioners were employed as Shop Analysts and Schedulers (R. 5).

This division of planning work continued until November 1959, when, as the result of a study conducted by the Navy's Bureau of Ships, a reorganization of the existing Production Planning and Control Program was directed (R. 95). The reorganization was prompted by the realization that there was, in fact, a substantial duplication of effort and repetition of thought processes between the Planners and Estimators and the Analysts and Schedulers (R. 165, 166). It was determined that a reorganization of the planning operation would result in a considerable saving in planning overhead (R. 95). The duties of the detailed planning that were formerly the responsibility of the employees holding the Analysts and Schedulers rating were assigned to the Planners and Estimators, who in addition retained their previously assigned tasks (R. 166, 167). Other tasks

[2] There is no separate position for a Planner and for an Estimator. The one rating, Planner and Estimator, is given to each individual so rated. A similar situation exists as to the position of Shop Analyst and Scheduler.

formerly assigned to the Analysts and Schedulers were reassigned to other employees in the shipyards. The Analyst and Scheduler rating was abolished (R. 166). A reduction-in-force procedure was therefore applied to that competitive rating, which constituted a separate level within the shipyards, and the Analysts and Schedulers were accordingly reassigned to those other positions for which they were qualified that involved the least grade reduction (R. 167).

In order to perform the increased workload of the Planners and Estimators, additional positions were created in that rating. To fill these jobs the Navy Department held a competitive examination and urged all former Analysts and Schedulers to compete for the higher-rated and higher-paid positions (R. 54). Those qualifying received promotions to the higher grade positions. No former Analyst and Scheduler was involuntarily separated.

2. PROCEEDINGS IN THE CIVIL SERVICE COMMISSION

A number of appeals were filed with the Commission by former Analysts and Schedulers affected by the reduction-in-force (R. 19). They contended that the reorganization had resulted in a "transfer of functions", and that, under Section 12 of the Veterans' Preference Act, 58 Stat. 390, as amended, 5 U.S.C. 861, and the pertinent regulations of the Commission and the Navy Department, they were entitled to be transferred to the Planner and Estimator rating along with their previously assigned duties prior to the application of the reduction-in-

force procedures (R. 19). To resolve the issue common to each of the appeals, *i.e.*, whether there had been in fact a transfer of a function from the Analyst and Scheduler rating to the Planner and Estimator rating, twelve representative test cases—those of petitioners—were presented to the chief of the Commission's Appeals Examining Office (R. 19, 20). After full hearing and argument, the Appeals Examiner concluded that, on the basis of the facts presented, no transfer of function had occurred within the meaning of the pertinent statute and regulations (R. 169). Petitioners appealed to the Commission's Board of Appeals and Review. The Board, in turn, submitted the case to the Commission for decision (R. 170).

The Commission affirmed, finding that "the function" involved in this case "was, and still is, the maintenance of planning and production control in each Naval Shipyard" (R. 171), and that no transfer of function had occurred here.

3. JUDICIAL PROCEEDINGS

Petitioners sought declaratory relief in the district court (R. 3), alleging, *inter alia*, that the Commission had acted unlawfully in failing to transfer the Shop Analysts and Schedulers to the Planners and Estimators rating, prior to the application of reduction-in-force procedure. The dispute was heard on cross-motions for summary judgment and the district court, without opinion, granted petitioners' motion and denied that of the government (R. 174).

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The court of appeals reversed, remanding the cause to the district court with instructions to enter judgment in favor of the government (Pet. 34). After tracing in detail the background and purpose underlying the enactment of the transfer-of-function provision of the Veterans' Preference Act, the court noted (Pet. 32):

> We think these conclusions of the Commission are solidly based in the evidence, are consistent with the applicable law and regulations, and are in accord with the interpretation and understanding of the term "function" under the Reorganization Act of 1939. The Analysts and Schedulers were individual workers, assigned as staff assistants to the Master Mechanic of the Yard. They were not an "organizational entity" within the Commission's definition of the statutory term "agency," as used in its 1954 regulation (Section 20.8). Nor did the Planners and Estimators constitute such an entity. The transfer which occurred was not the transfer of the functions of an "agency," as defined by the Commission, but the transfer of certain job duties of individual workers, or, perhaps more correctly, of a class or grade of individual workers, to workers of another class or grade.

Additionally, the court agreed with the Appeals Examiner that a "transfer followed by a reduction in force, as desired by the [petitioners], would * * * gain them little or nothing" (Pet. 33). For the reduction-in-force process "does not permit persons in lower grades to compete at a higher level and thus gain a promotion" (*ibid.*), and, the Planner

and Estimator rating was higher than the Analyst and Scheduler rating.

ARGUMENT

In this action petitioners challenge the adjudication of their employment status by the Civil Service Commission and the Department of the Navy following a work reorganization within the several naval shipyards. The propriety of the administrative determinations was carefully considered and approved by the court below. As we show, that decision was clearly correct. Further review by this Court is not warranted.

1. It is of course fundamental that, except as provided by an Act of Congress or an administrative regulation, a federal employee enjoys neither an absolute right to the retention of his position in the civilian service nor to any particular form of procedure in his removal from that position. *Eberlein* v. *United States*, 257 U.S. 82; *Keim* v. *United States*, 177 U.S. 290; *Baylan* v. *Quarles*, 235 F. 2d 834 (C.A.D.C.). Judicial scrutiny has been afforded, therefore, primarily to insure substantial compliance with procedural requirements prescribed by statute or regulation. See *e.g.*, *Hoffiund* v. *Seaton*, 265 F. 2d 363 (C.A.D.C.), certiorari denied, 361 U.S. 837; *Hargett* v. *Summerfield*, 243 F. 2d 29 (C.A.D.C.), certiorari denied, 353 U.S. 970; *Powell* v. *Brannan*, 196 F. 2d 871 (C.A.D.C.). Cf. *Pelicone* v. *Hodges*, No. 17467 (C.A.D.C.), decided June 13, 1963. There was no departure from established procedures in this case. Involved here is simply an administrative determination that the efficiency of the operations of

the Navy's shipyards would be promoted by a reallocation of the planning and programming duties among the shipyard's personnel.

a. Section 12 of the Veterans' Preference Act provides that, when "any or all of the functions of any agency are transferred to * * * some other agency or agencies, all preference employees in the function or functions transferred * * * shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such position" (5 U.S.C. 861, *infra*, p. 16).[3] In discharge of its statutory responsibility to implement that requirement (5 U.S.C. 860), the Civil Service Commission defined "function" as a "clearly identifiable part of an agency's mission, regardless of the manner in which it is performed, and all the integral parts of the mission",[4] emphasizing that a function must be

[3] And see 5 C.F.R. 20.8(a), *infra*, pp. 17–18), for the corollary regulation provision.

This right of transfer has been extended to the transfer of functions within an agency as well as between agencies. Civil Service Commission, Departmental Circular No. 740, p. 1, issued January 12, 1954, (R. 138).

[4] Civil Service Commission Departmental Circular No. 740, Supplement No. 2, issued on June 23, 1960, set out in full at R. 145. That circular in no way established new criterion for determining when a transfer of function has occurred within the meaning of the Veterans' Preference Act. Rather, it was but a codification of what had consistently been understood to have been meant by the term "transfer of function." See, for example, the official memorandum of the Commission's General Counsel, dated May 19, 1959, explaining the applicability of Section 12 of the Veterans' Preference Act set forth at R. 131–137.

distinguished from an individual job or task as well as from the overall mission of the agency. Rather, "[a]ny activity carried on by an agency which can be identified as a recognizable segment of its overall area of responsibility may be a function."

A "transfer of function" is defined as the "transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area."[5] By way of explanation the Commission pointed out that, for there to be a "transfer of function," the function must "reappear in identifiable form at a new location despite its disappearance or discontinuance at its old location." The Commission additionally made clear that the "movements of activities or assignments entirely within a competitive area * * * are not considered to be transfers of functions within the meaning of the regulations. Such shifts are reorganizations within the competitive area and if any employees are to be separated or demoted as a result of the shifts the reduction in procedures must be applied" (R. 147).

---

[5] "Competitive area" is defined as "that part of an agency, usually within a local commuting area, in which employees are shifted (reassigned, promoted, and demoted) under single administrative authority, and within which competitive levels are established in reductions in force" 5 C.F.R. 20.2(e).

"Competitive level" is defined as "all similar positions within a competitive area in which employees could be readily interchanged, without undue interruption to the work program. (Such positions are in the same grade or occupational level.)" 5 C.F.R. 20.2(f).

Applying the Commission's criterion, the Navy has determined that a transfer of function in its operation occurs when the "work being performed by one service or naval activity is to be taken over by another service or naval activity." Naval Civilian Personnel Instruction,* 170.9–4b(1), *infra*, p. 24. The term "service" is defined to include "each military department of the Department of Defense and the Office of the Secretary of Defense." NCPI 170.9–4, *infra*, p. 23. The naval activity involved in this case is the "Naval Shipyard." NCPI 170.4–1a(2), *infra*, p. 20. Therefore, a function is transferred within the Navy only when an identifiable part of the Navy's mission is transferred from one Navy shipyard to another or from a shipyard to some other naval activity.

b. After determining what constituted the "function" performed herein and applying the above regulations, the Commission concluded that the Shop Analysts and Schedulers and the Planners and Estimators were engaged in the constituent tasks of the same function, to wit, planning and production control and, accordingly, that a transfer of function had not occurred. That conclusion was compelled by the facts at bar.

Prior to 1959, when a naval shipyard would be advised that a vessel was scheduled for repair work the Planners and Estimators, would, in the main, prepare Job Orders, containing a general description of the work to be performed together with necessary specifications, a designation of the shops that would

* Navy Civilian Personnel Instruction will be hereafter cited as NCPI.

be involved and the duties for which each would be responsible, an estimate of the man-days involved, and an estimate of the total labor, overhead and material costs (R. 24, 110, 162–163). The Job Order would then be routed to the Analyst and Scheduler for the preparation of a Job Process Card (R. 28). The Analyst and Scheduler would then break down the work assignments listed on the Job Order into each of the specific tasks that would have to be performed to accomplish the overall job (R. 163). The Analyst and Scheduler would also prepare Job Instruction Cards for the shop supervisors and mechanics assigned performance of the actual work, make minor material purchases, and keep check of work progress (R. 31, 114).

In the November 1959 reorganization of the Production Planning and Control Program, the Shop Analyst and Scheduler position was discontinued (R. 165, 166). The Planners and Estimators were instructed to prepare a single document designated a Job Order Process Card which replaced the three documents prepared prior to the reorganization, *i.e.*, the Job Order, the Process Card, and the Job Instruction Card (R. 33, 34). The new Job Order Process Card lists in detail the work operations to be performed, the labor, overhead, and material costs, the shops involved, the estimated number of man-hours, the work specifications, and the starting and completion dates for each shop (R. 118). Copies are forwarded to each of the shops involved for delivery direct to the first line supervisor or mechanic responsible for the accomplishment of a particular work

item (R. 34–35). Additionally, a Shop Planner position was established in each of the shops within the Production Department (R. 166). These positions are concerned chiefly with the routing and progress (follow-up) work in the shops (R. 35).

As can be seen, the 1959 reorganization was prompted by the realization that there was a substantial duplication of effort and an overlapping of planning activities within the Planning and Production Departments, and that considerable savings in planning overhead could be accomplished through a reorganization of the planning operations (R. 95, 165).

In substance, the total planning function, both prior to and following the reorganization, was performed in two divisions. In reality, as the Commission found, the primary work of both the Planners and Estimators and of the Analysts and Schedulers were, prior to the reorganization, operating parts of a single function and not independent and separable functions. As a result of the reorganization, some of the duties formerly performed by Analysts and Schedulers are now performed by Planners and Estimators. But it does not necessarily follow that a "function" has been transferred. We submit that it is for the administrative expertise to designate the appropriate "function" and that the characterization here made by the Civil Service Commission is appropriate and reasonable.

c. Additionally, the Civil Service Commission has provided that, for there to be a transfer of function, there must have been a transfer "of a continuing function from one competitive area and its addition

to one or more other competitive areas * * *." Civil Service Commission Departmental Circular No. 740, Supp. No. 2 (R. 145). And, it is clear that, irrespective of what is the appropriate function herein, it remained within, and is now being performed, by other personnel in the same competitive area, *i.e.*, in the same naval shipyard, and it is to these positions that petitioners seek promotions. This being so, a transfer of function could not, under the statute as implemented by regulations, have taken place. The reasonableness of the regulatory scheme is apparent. It would surely be detrimental to the federal service, as it would be to a private enterprise, if the administrative employer could not delegate, as he saw fit, the assignment of particular tasks to that category of personnel he deemed most efficient within his area of responsibility. To define "transfer of function" (as presumably petitioners would) as any shift in the performance of a designated task or series of tasks would surely have chaotic repercussions. It would require the reshuffling of employees each time it was determined that the efficiency of the federal service would be furthered by a shifting of job responsibilities, which in turn would often frustrate the very purpose of the shift. Mindful of the fact that a delicate balancing of interests was necessary, Congress selected a broad term and left it to the administrative expertise to supply precise meaning. We submit that the regulatory scheme adopted is wholly consistent with the legislative intendment, as the court below recognized (Pet. 32), and that there are no considerations warranting further review by this Court.

d. In any event, it is difficult to see how petitioners themselves could benefit, even on their understanding of the regulatory scheme. The Planner and Estimator rating was higher than the Analyst and Scheduler rating. And, in a reduction-in-force, employees compete only with other employees in their grade. Cf., *Cutting* v. *Higley*, 235 F. 2d 515 (C.A.D.C.), certiorari denied, 352 U.S. 883. As the court below correctly observed, "the process does not permit persons in lower grades to compete at a higher level and thus gain a promotion" (Pet. 33). Accordingly, even were petitioners' interpretation of the transfer of function provision adopted, their cause would not be advanced. The supervisors of the naval shipyards had no obligation whatever to promote petitioners to the newly added Planners and Estimators positions solely on the basis of their retention credits. Their only responsibility was to adopt a method of screening applicants that would be reasonably calculated to secure the best qualified individuals. Here, a competitive examination was conducted and all former incumbents of the Analysts and Schedulers positions were urged to compete for the higher rated positions. Those not qualifying were appointed to other positions for which they were qualified which necessitated the least grade reduction. No former Analyst and Scheduler was involuntarily separated from the federal service. The screening procedure adopted by the Navy was clearly reasonable.

2. In an endeavor to state a question worthy of this Court's consideration, invoking *Service* v. *Dulles*, 354 U.S. 363, petitioners characterize the Commission's

failure to grant them the requested transfers as a violation of the procedural rights accorded them by the Veterans' Preference Act and relevant Civil Service Commission and Navy regulations (Pet. 12–14, 19). The record plainly establishes, however, that petitioners' procedural rights have been meticulously guarded throughout the course of this litigation. In fact, a stipulated procedure was employed (R. 19). Properly analyzed, petitioners' complaint is not with procedures but, rather, with the determination made with respect to the substantive question they agreed should be decided by the Commission, which, as we have shown, turns upon the facts of this particular case and can therefore have no recurring significance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.
SHERMAN L. COHN,
EDWARD BERLIN,
Attorneys.

OCTOBER, 1963.

APPENDIX

Section 12 of the Veterans' Preference Act, 58 Stat. 390, as amended, 5 U.S.C. 861, provides:

> In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing non-preference employees who have equal or lower efficiency ratings: *And provided further*, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

The Civil Service Commission's Retention Preference Regulations for use in Reduction in Force provide in pertinent part:

5 C.F.R. 20.5. Actions.

(b) *Employees in positions in the competitive service.* (1) No employee may be separated, furloughed for more than thirty (30) days, or reduced in pay or grade in a reduction in force while a competing employee with lower retention standing (and without retention priority based on a statutory retention right) is retained in the same competive level.

(d) *Reasonable change in position—*

(1) *How determined.* A change between positions is reasonable if the representative rate of one position is the same as the representative rate of the other position; however, if the employee cannot be changed to a position with the same representative rate, a change in position is reasonable if made with the least reduction in representative rate.

(3) *Choice of position.* An agency is not required to give an employee a choice between reasonable changes in position. Any agency is not required to fill a vacant position, to change an employee to a position with a higher representative rate, or to move an employee to a different duty station, but an agency is not prohibited from taking these actions. No employee rendering satisfactory service in a position shall be required to be displaced by a competing employee who is not qualified for such position under the regulations in this part.

5 C.F.R. 20.8. Special regulations relating to consolidations and liquidations.

(a) Before any reduction in force is made in connection with the transfer of any or all of the functions of an agency to another continuing agency, all competing employees in positions identified with such function or functions shall be transferred to such continuing agency, without change in tenure of appointment. Employees whose positions are transferred solely for the purpose of liquidation, and are not identified with operating functions specifically authorized at the time of transfer to continue in operation more than sixty (60) days, shall not be considered as competing employees for other positions in the receiving agency.

The Navy Civilian Personnel Instruction applicable to Reductions in Force provides in pertinent part:

INSTRUCTION 170
REDUCTIONS IN FORCE
SECTION 1, LEGAL BASIS

* * * * *

1-1. VETERANS' PREFERENCE ACT.—The Veterans' Preference Act of 1944 (58 Stat. 387; 5 USC 851-869), as amended, is the basic law governing reduction in force. Section 12 of this Act specifically prescribes reduction-in-force criteria. Sections 11 and 19 of the Act authorize and direct the Civil Service Commission to issue and enforce regulations to carry out the provisions, intent and purpose of the Act. Section 19 also provides that agencies must comply with decisions of the Commission. Sections 11, 12 and 19 are quoted in NCPI 170. 11-Encl. 1.

* * * * *

1-3. CIVIL SERVICE COMMISSION REGULATIONS.—Chapter Z1 of the Federal Personnel Manual contains the Civil Service Commission's Regulation 20, the Retention Preference Regulations. The provisions of Regulation 20 have been incorporated in this Instruction.

SECTION 2, GENERAL PROVISIONS

2-2. GENERAL.—Management decides what positions are necessary, when it is necessary to reduce personnel, and where and how large a reduction to make. The reduction-in-force instructions govern which employees will be affected by reduction in force after these basic determinations have been made by management. A summary of reduction-in-force procedures is as follows:

a. Competitive areas are established according to primary subdivision of an agency. In the field service each naval activity usually constitutes a competitive area.

b. Competitive levels, within which employees compete for retention, are established in each competitive area. Positions in a competitive level must be similar enough that interchange of personnel, without undue interruption to work, is feasible.

* * * * *

f. When a reduction in force in any competitive level becomes necessary, employees are reached for action in the order of their subgroup standing and within their subgroup in the order of retention credits.

* * * * *

2-4. DEFINITIONS.—Throughout this Instruction certain words and phrases which have special meaning for reduction-in-force purposes are used. The definitions of these terms are as follows:

* * * * *

c. Commuting area.—The geographic area within which people live and can reasonably be expected to travel back and forth to work in the course of their daily employment. In the field service it is determined by the Commandant of the Naval District subject to the con-

currence of the appropriate Civil Service Commission regional office. It is based on such factors as distance, availability and adequacy of public transportation facilities, cost of such transportation, and travel time required in going to and from work.

d. Competitive area.—The area within which employees compete for retention in employment in reduction in force. A normal competitive area is one complete naval activity under single command within one commuting area. Smaller competitive areas must be approved by the Civil Service Commission in accordance with NCPI 170.4–1. Larger competitive areas may be established by commanding officers upon approval of the cognizant bureau or office (See NCPI 170.4–1).

e. Competitive level.—The grouping of positions for initial reduction-in-force competition to determine which employees will be separated from and which will be retained in their positions. All positions, within a competitive area, of such similarity that interchange of personnel is feasible are placed in the same competitive level. See NCPI 170.4–2.

* * * * * *

SECTION 4. BASIC FACTORS IN REDUCTION IN FORCE

* * * * * *

4–1. COMPETITIVE AREAS.

a. Normal competitive areas.—A normal competitive area is a naval activity as defined below, within which employees are subject to being shifted (reassigned, promoted and demoted) under single administrative authority. The special patterns of competitive areas listed below have been established by the Navy Department and cleared with the Civil Service Commission.

(1) *Naval activity (departmental service).*—

In the departmental service the following will be considered as naval activities:

* * * * *

(h) Bureau of Ships.

* * * * *

(2) *Naval activity (field service).*—In the field service the following will be considered as naval activities:

(*a*) Naval District, or River Command, Staff. Headquarters.

(*b*) Naval Shipyard.

* * * * *

b. Special competitive areas.—Special competitive areas, as exceptions to the above established patterns, are approved by the Navy Department and the Civil Service Commission upon adequate justification. After a competitive area has been approved, it shall be adhered to unless reorganization of the activity has affected the original reduction-in-force plan, or the facts upon which the plan was originally based have changed. In such cases recommendation for new areas may be submitted.

* * * * *

(2) *Establishing smaller competitive areas.*

(*a*) Activities which consider that smaller competitive areas, or other special competitive areas, are essential to the efficient operation of the activity should give due consideration to the following:

1. In general, it is the policy of the Navy Department to make competitive areas as broad as possible, so as to protect the equity of employees to the maximum extent;

* * * * *

4–2. COMPETITIVE LEVELS.—A competitive level consists of all of the positions of one competitive area which are of such similarity as to duties, responsibilities, qualifications required, pay systems and working conditions that interchange of personnel is feasible. The

qualifications or sex of the particular incumbents do not establish a basis for separate competitive levels. Generally, graded positions will be of the same occupational title, but this is not necessary if the other tests are met.

a. Specific separate competitive evels.

* * * * * *

(2) Each rating listed in NCPI 250 will be in a different competitive level. Apprentices and mechanics (limited) will be in competitive levels separate from journeymen and by trade or occupation.

* * * * * *

SECTION 8, PLACEMENT, SEPARATION AND REEMPLOYMENT ASSISTANCE

* * * * * *

8–1. GENERAL. * * *

i. No right to promotion.—Employees reached for reduction-in-force action may be promoted to vacancies. See *h* above. No employee may be displaced through the promotion of another employee to a position having a higher representative rate.

* * * * * *

8–2. PLACEMENT WITHIN THE COMPETITIVE AREA.—

* * * * * *

a. Placement right within the competitive area.—An employee is entitled to a reasonable offer of reassignment if there is a continuing position in the competitive service in any other competitive level:

(1) for which he is qualified; and

(2) which is occupied by an employee in a lower retention group or subgroup.

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c. Reasonable offer determination.

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(4) *Choice of position.*—An activity is not required to give an employee a choice between reasonable changes in position. An activity is

not required to fill a vacancy, or to change an employee to a position with a higher representative rate; an activity is not, however, prohibited from taking these actions.

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8–4. DETERMINING QUALIFICATIONS.—When an employee has received a notification of reduction in force a determination must be made as to his qualification for other positions. There is never any question as to his qualifications for positions in the competitive level from which being separated. In making these determinations the following instructions relating to ability to perform duties, physical fitness, security requirements and eligibility for higher level positions must be observed. These instructions are equally applicable to determinations for reassignment and for entry on the Reemployment Priority List:

a. Ability to perform duties.—Subject to other requirements of this section an employee is considered "qualified" if he is capable of performing the duties of the position. In making this qualification determination the following shall be taken into account:

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(2) To be "qualified" he must have the knowledges, skills, techniques, and adaptability required in the position and be capable of assuming and performing acceptably such duties without training in the basic fundamentals of the position.

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SECTION 9. PROCEDURES FOR SPECIAL CIRCUMSTANCES

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9–4. TRANSFER OF FUNCTIONS.—The term service as used herein shall include each military department of the Department of Defense and the Office of the Secretary of Defense.

a. From or to another Federal agency, service of the Department of Defense or naval activity.—When functions are transferred from one location to another all of the Retention Group I, II and III employees involved shall be transferred with the functions. The same action shall be taken whether the transfer is between Federal agencies, services of the Department of Defense or naval activities. The tenure of employees transferred shall not be changed regardless of whether they are in a duty or nonduty, pay or nonpay status.

b. Policy.—The policy outlined in (1) through (4) below was established by the Department of Defense for the purpose of assuring equitable and uniform treatment of employees when functions to which they were assigned are transferred from one service of the Department of Defense to another, or from one naval activity to another. The same criteria shall apply when functions are transferred to a different location within the same activity. They will apply also to similar actions involving transfer from or to another Government agency when not inconsistent with any provision of law or agreement relating to a particular transfer or consolidation:

(1) The work being performed by one service or naval activity is to be taken over by another service or naval activity. This will be considered a transfer of function if there is reasonable expectation that the work being transferred will continue for more than 60 days.

(2) The work of one service or naval activity is simply being cancelled and no corresponding function is being assumed by another service or naval activity. This will result in a reduction in force solely by the service or naval activity whose work is cancelled.

(3) A combination of transfer of some continuing functions and a cancellation of others is involved. The action to be taken will depend

upon the separability of the two groups of functions. When it is not possible to differentiate between personnel working on that portion of the work subject to reduction in force due to cancellation of work and that portion being transferred, the entire action will be handled as a transfer of function.

(4) One service or naval activity is transferring real property to another service or naval activity, but not the work being performed on that property. The work of the employees directly engaged in the custody and maintenance of the real property will be considered to have been transferred to the receiving service. Employees other than those directly and primarily engaged in the custody, protection and maintenance of the real property do not have regulatory rights to consideration for transfer. However, to the maximum extent possible in hiring to meet its requirements, the gaining service will give priority consideration to the employees of the losing service.

c. Identifying positions with transfer of functions.—It is necessary to make a determination as to which, if any, positions or units are identifiable with work that is to be transferred to a different location. This determination must be made whether the work is being transferred to a different location within the activity, to another naval activity or to a different service in the Department of Defense. Transfers between activities or services should be made by, or with the concurrence of the Bureaus concerned. Should management bureaus or offices concerned fail to reach agreement, the case will be forwarded to the Assistant Secretary of the Navy (Personnel and Reserve Forces) for final resolution. The determination should be made sufficiently in advance to meet notice requirements of any related reduction-in-force action or separation of employees who decline offer to move with their functions.

The following criteria in addition to those outlined in *b* above will be be used to make the determination:

(1) Certain duties of one or more positions are to be transferred while the unit performing the functions to be transferred will remain intact to perform remaining functions. If the majority of the duties of a position are to be transferred to another service or naval activity, the incumbent will be identified with the transfer of functions. However, if grade-controlling duties are involved the employee's rights will be based on the location of the higher grade duties rather than the majority of duties.

(2) Employees whose positions are being abolished because the function is being transferred to another Service or naval activity enjoy transfer of function rights even though no additional personnel are required by the Service or activity acquiring the function.

(3) When the majority of an employee's duties are being transferred to more than one location his transfer of function rights are dependent upon the planned location of the largest portion of his duties unless grade-controlling duties are involved (see (1) above). If a determination cannot be made as to which activity will receive a majority of the duties (or grade-controlling duties) the employee will be identified with one of the activities by administrative determination.

(4) An employee providing service or support to an organization being transferred is to be identified with the transfer of functions if it is determined that more than half of his duties are devoted to the organization being transferred. For example, a Public Works Laborer Cleaner is assigned to clean offices in a Division of another Department that is being transferred. The Laborer Cleaner would be identified with the transfer.

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